

Montana Water Court
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FILED
04/05/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0754-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Charles D. Jones; Laura J. Jones

CASE 43B-0754-R-2022
43B 194657-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Charles D. Jones and Laura J. Jones claim 43B 194657-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remark was not addressed and resolved through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On December 5, 2022 the claimants filed a Response including marked aerial photograph copies. On February 28, 2023 the Order Setting Filing Deadline was entered. The Order includes a DRAFT modified abstract for the claimants to review to be certain they agreed with the Court's proposed refinements of the point of diversion legal descriptions. On March 9, 2023 the claimants filed a second Response stating they agreed with the changes as shown on the DRAFT abstract. The Responses are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSWSW	19	1N	15E	SWEET GRASS

The point of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSWSE	19	1N	15E	SWEET GRASS
SWSWSE	19	1N	15E	SWEET GRASS
NESESW	19	1N	15E	SWEET GRASS
NWSESW	19	1N	15E	SWEET GRASS

NENENW 30 1N 15E SWEET GRASS

The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the claimants is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Charles D. Jones
Laura J. Jones
PO Box 1793
Big Timber, MT 59011

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194657-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LAURA J JONES
PO BOX 1793
BIG TIMBER, MT 59011 1793

CHARLES D JONES
PO BOX 1793
BIG TIMBER, MT 59011 1793

Priority Date: JUNE 15, 1903

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.14 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 30.00

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	19	1N	15E	SWEET GRASS
Period of Diversion:	APRIL 1 TO DECEMBER 1					
Diversion Means:	HEADGATE					
2		SWSWSE	19	1N	15E	SWEET GRASS
Period of Diversion:	APRIL 1 TO DECEMBER 1					
Diversion Means:	HEADGATE					
3		NESESW	19	1N	15E	SWEET GRASS
Period of Diversion:	APRIL 1 TO DECEMBER 1					
Diversion Means:	HEADGATE					
4		NWSESW	19	1N	15E	SWEET GRASS
Period of Diversion:	APRIL 1 TO DECEMBER 1					
Diversion Means:	HEADGATE					
5		NENENW	30	1N	15E	SWEET GRASS
Period of Diversion:	APRIL 1 TO DECEMBER 1					
Diversion Means:	HEADGATE					

Period of Use: APRIL 1 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		SWSE	19	1N	15E	SWEET GRASS
Total:	30.00						